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MONTANA LEGISLATIVE HISTORY

Chapter 243 -19 2001

Bill H 195 S _____ Original bill & history ✓ C

H. Committee on Jud.		S. Committee on Jud.	
Hearing Date(s) 1/18	✓ C	Hearing Date(s) 2/5	✓ C
	C		C
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Date Out	C		

Did this bill originate in an interim committee? ____ Yes ✓ No

Committee _____ Report _____

H BILL NO. 195

INTRODUCED BY Rep Marlan Weiley
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT ADDING CRIMINAL POSSESSION OF DANGEROUS DRUGS AND CRIMINAL POSSESSION WITH INTENT TO DISTRIBUTE TO THE LIST OF CRIMES THAT, IF COMMITTED BY A YOUTH 16 YEARS OF AGE OR OLDER, ARE TRANSFERABLE FROM YOUTH COURT TO DISTRICT COURT; CLARIFYING APPLICATION OF ATTEMPT OR ACCOUNTABILITY TO TRANSFERABLE CRIMES; AND AMENDING SECTION 41-5-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal distribution of dangerous drugs as defined in 45-9-101;

(x) criminal possession of dangerous drugs as defined in 45-9-102(2) (second or subsequent offense), (4), and (5);

(xi) criminal possession with intent to distribute as defined in 45-9-103(1);

~~(x)~~(xii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(xi)~~(xiii) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(iii)~~ (1)(b)(xii) and ~~(1)(b)(v) through (1)(b)(xii)~~ (1)(b)(xiv);

~~(xii)~~(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

~~(xiii)~~(xv) escape as defined in 45-7-306.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court if the district court finds, by a preponderance of the evidence, that a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that, considering the seriousness of the offense, the case should remain in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been

filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 18, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Steven Gallus (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 195 - 1-11-01**
HB 224 - 1-16-01
HB 146 - 1-11-01

Executive Action: **HB 195 - DPAA**

HEARING ON HB 195

Sponsor: Rep. Merlin Wolery, HD 90, Hill County said this is a Bill requested by Hill County Attorney, David Rice. It would add criminal possession of dangerous drugs and criminal possession with intent to distribute to the list of crimes that, if committed by a youth 16 years of age or older, are transferable from Youth Court to District Court. **EXHIBIT(juh14a01)**

Proponents: Rep. Brad Newman, HD 38, said he appears at the request of Hill County Attorney, David Rice and because he thinks it is a good Bill. It does not change existing law except for adding two offenses to the statute. This is existing Montana law as far as we deal with older, more experienced juvenile offenders and how we deal with offenses in the adult district court. This Bill simply adds criminal possession of dangerous drugs, second subsequent offense, not the first offense, and criminal possession with intent to distribute, to the list of enumerated offenses. The question posed to this Committee is quite simple and quite straightforward. Are these two situations, or offenses, of such a severe nature that we should add them to the list of enumerated offenses in current existing law? He believes, as a prosecuting attorney, that they should.

Bob Peake, Chief Juvenile Probation Officer, Hill County.

Pam Bucy, Assistant Attorney General and on behalf of John Connor, who represents the County Attorneys' Association.

Sandy Oitzinger, Executive Director, Montana Juvenile Probation Officers' Association.

Joy Mariska, Director, Court Services; Chief Juvenile Probation Officer, Yellowstone County.

Opponents: None

Questions from Committee Members and Responses: **Reps. Peterson, Harris, Clark, Noennig, Hurdle, Clancy, Mangan to Rep. Newman, Pam Bucy, Bob Peake, Ms. Oitzinger and Ms. Mariska for clarification.**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 29.2}

Closing by Sponsor: **Rep. Wolery** closed the Hearing on HB 195.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 9.4}

HEARING ON HB 224

Sponsor: **Rep. Joan Hurdle, HD 13, Billings** said this Bill would give some assistance to children whose mothers are in prison. The League of Women Voters, in a statewide study, proposed to study the effects of incarceration on the children of those who are incarcerated and they have not completed that study so she is not speaking for the League of Women Voters, however, the Billings branch completed their portion of the study and she served on that committee. **EXHIBIT(juh14a02) EXHIBIT(juh14a03)** The Bill has safeguards. The requirements of this Bill apply only to formerly custodial care-giving parents.

Proponents: **Deborah Kottel, Dean of the College of Professional Studies, University of Great Falls.**

Sharon Hoff-Brodowy, Montana Catholic Conference

Betty Whiting, Montana Association of Churches

{Tape : 1; Side : B; Approx. Time Counter : 9.4 - 29.1}
{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 5.7}

Rebecca Moog, Montana Women's Lobby

Rep. Gail Gutsche, HD 66, Missoula

{Tape : 2; Side : A; Approx. Time Counter : 5.7 - 8.4}

Opponents: None

Questions from Committee Members and Responses: **Reps. Clark, Clancy, Laszloffy, Peterson, Curtiss, Mangan, Harris, Rice, Shockley, Gutsche to Ms. Kottel; Rep. Hurdle; Mike Ferriter, Administrator, Community Corrections Division, Department of Corrections** for clarifications.

{Tape : 2; Side : A; Approx. Time Counter : 8.4 - 29}

Closing by Sponsor: **Rep. Hurdle** said it is obvious she is going to have to change the words "overnight stays" to just "extended visiting" and leave that up to the Department of Corrections. This Bill is a beginning of all the things that need to be done. There are 5,000 children in Montana who didn't choose these

opposed to that statement. That is not a neutral statement. That is taking a position on the Bill and whether or not **Rep. Mangan** said he asked for a Do Pass or a Do Not Pass is irrelevant and that's the reason he made that ruling. He does not mean to be contentious but the reason he did that, and, as stated above, suggested **Rep. Mangan** talk to his Vice-Chair. If that does not work out he can always come back. According to House Rule 2030, sub 2, any decision of the Chairman is reversible and he can appeal to the Committee. **Rep. Clark** recommended that they reserve this for a time when they have executive action and he will discuss this with **Rep. Mangan** and **Rep. Laszloffy** to settle the issue. **Rep. Noennig** concurred with that. He thinks **Rep. Mangan's** position can be made a motion in executive action and the Committee can rule on it. The way he understands, it can be a ruling of the Chair of the Committee. He respectfully requested they defer that until a time when the Committee meets in executive action and bring up the issue then if it still needs to be done and hasn't been resolved. **Rep. Mangan** agreed.

EXHIBIT(juh14a07) and **EXHIBIT(juh14a08)** received as additional information for HB 151.

EXECUTIVE ACTION ON HB 195

Motion: **REP. NEWMAN** moved that **HB 195 DO PASS. #1**

Motion: **REP. NEWMAN** moved that **HB 195 BE AMENDED. #2**

Discussion: **Rep. Newman explained his amendments saying specifically on Page 2, lines 5 and 6 in the new language concerning criminal possession of dangerous drugs, the amendment would delete subsection II and would delete "Second or subsequent offense".**

EXECUTIVE ACTION ON HB 195

Motion: **REP. NOENNIG** moved that **HB 195 DO PASS AS AMENDED. #3**

Discussion: **Reps. Hurdle, Peterson, Noennig, Newman, Adams, Gutsche, Clark, Clancy, Eggers and Younkin.**

Vote: **Motion #3 carried 15 - 4 with Reps. Clark, Gutsche, Hurdle, and Mangan voted no.**

{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 28.9}
{Tape : 5; Side : A; Approx. Time Counter : 0.1 - 14.5}

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 5, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 195 HB 184 HB 191, 2/2/2001
Executive Action: HB 195, HB 184, SB 17

HEARING ON HB 195

Sponsor: REP. MERLIN WOLERY, HD 90, HAVRE & HILL COUNTY

Proponents: Pam Bucy, Assistant Attorney General

Opponents: None

Opening Statement by Sponsor:

REP. MERLIN WOLERY, HD 90, HAVRE & HILL COUNTY, said this bill would add two enumerated offenses in 41-5-206 of the Montana code

that are charges against youth that could be moved to the district courts. He stated these additions would add possession of dangerous drugs and criminal possession with intent to distribute as defined in the codes. He explained an incident with a youth who was 16 and was involved with drug dealings and they could only send him to Pine Hills until he turned the age of 18, which he went back to dealing drugs in his home town, this bill would allow adult courts take action on the youth in these situations.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, stated this bill adds criminal possession in felony amounts and criminal possession with intent to distribute to crimes that juveniles can be tried as adults. She said 16 year old youths, who are in possession of drugs, are affecting younger children and this is a major concern. She added this allows the judge discretion as to whether these crimes are transferred, but these would definitely be transferred to adult court.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DUANE GRIMES asked how frequent these crimes occur and how many youth this effects. **REP. WOLERY** said he didn't have any facts, but it would be infrequent for the criminals that are dealt with in the youth court.

SEN. GRIMES asked what the impact of this bill would have. **Pam Bucy** said she didn't have any facts. She said it may affect 40 teens per year, and it wouldn't be terribly frequent. She mentioned with these crimes most were not able to be transferred.

Closing by Sponsor:

REP. MERLIN WOLERY, HD 90, HAVRE & HILL COUNTY, summarized the need for this bill and asked the committee for their support.

HEARING ON SB 184

Sponsor: REP. STEVE GALLUS, HD 35, BUTTE

Proponents: Brenda Nordlund, Motor Vehicle Division

Opponents: None

insurance policy for this youth to drive the company truck due to offenses on his driving record.

EXECUTIVE ACTION ON HB 195

Motion: **SEN. GRIMES** moved **HB 195 BE CONCURRED IN.**

Discussion:

SEN. GRIMES asked if criminal possession of dangerous drugs would include trying a youth and what is the threshold under this code. **Pam Bucy, Assistant Attorney General,** said this was amended in the house as a felony possession amounts and it doesn't include any misdemeanor crimes.

Vote: **Motion carried unanimously.**

EXECUTIVE ACTION ON HB 184

Motion/Vote: **SEN. HOLDEN** moved **HB 184 BE CONCURRED IN AS AMENDED.** Amendments were passed out in prior hearing **EXHIBIT(jus29a06).** **Motion carried unanimously.**

EXECUTIVE ACTION ON SB 17

Motion: **CHAIRMAN GROSFIELD** was absent the day of the tie roll call vote, January 18, 2001 he cast his vote as yes on SB 17. **Vote: Motion SB 17 DO PASS carried 5-4** with **SEN. DOHERTY, SEN. HALLIGAN, SEN. PEASE AND SEN. GRIMES** voting no.

Miscellaneous Discussion:

SEN. GRIMES wanted the committee to be aware of issues regarding **SEN. BOHLINGER'S** bill regarding penalties for prostitution cases. He talked with the FBI and they didn't feel a task force would be useful to have right now. He mentioned the convictions they have had and there was no reports on the street right now.

SEN. HOLDEN asked if any amendments were being prepared for **SEN. O'NEIL'S Bill 242** dealing with building codes. **Valencia Lane** said she had only seen the amendments handed out by **Alec Hansen, Montana League of Cities and Towns.**